In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ABRAHAM L. SUGARMAN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA. } No. 345.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

CHARLES T. SCHENCK, PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA. } No. 437.

ELIZABETH BAER, PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA. } No. 438.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CONRAD KORNMANN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA. } No. 548.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH DAKOTA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the defendant in error and respectfully moves the court to advance the above entitled cases for hearing on a day convenient to the court.

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Each of the cases involves the validity of the conviction of the plaintiff in error therein for a violation or violations of the Espionage Act of June 15, 1917, 40 Stat. 217.

In case No. 345 Sugarman was convicted of a wilful attempt to cause insubordination and refusal of duty in the military forces of the United States by urging and advising certain men who had theretofore registered under the provisions of the Selective Draft Act of May 18, 1917, 40 Stat. 76, not to report for military service when ordered so to do by the military authorities, in violation of section 3, Title I, of the Espionage Act. This section provides that

> * * * whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.

The indictment in the *Schenck* and *Baer* cases, Nos. 437 and 438, was in three counts, which charged in order, first, a conspiracy under section 4, Title I, of the Espionage Act to violate the provisions of section 3, above quoted; second, a conspiracy to commit an offense against the United States—that is, the use of the mails for the transmission of matter (circulars) declared by Title XII of the act to be

nonmailable; and, third, the use of the mails for the transmission of such matter.

In the *Kornmann* case, No. 548, there was likewise a conviction of the offense of wilfully using the mails for the transmission of a certain letter declared by the act to be nonmailable, the letter being intended and tended to cause insubordination and refusal of duty in the military forces of the United States and obstructed the recruiting and enlistment service, in violation of section 3, Titles XII and I, respectively, of the act. There was also a conviction of the offense (1) to cause and attempt to cause such insubordination and refusal of duty, and (2) to obstruct the recruiting and enlistment service, the indictment being in four counts.

Although the cases present different questions they all involve the same general question of the constitutional validity of section 3, Title I, of the Espionage Act, namely, whether or not it constitutes an abridgment of the freedom of speech and the right of petition, in contravention of the First Amendment to the Constitution. It is therefore respectfully suggested that the convenience of the court may be served by a setting of the cases for hearing on the same day.

The plaintiffs in error are at large on bail.

Notice of this motion has been served upon opposing counsel.

G. CARROLL TODD,
Assistant to the Attorney General.

OCTOBER, 1918.

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